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U.S. DISTRICT COURT
MID. DIST. TENN.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

ROBERT ZENAS WHIPPLE, III,
Plaintiff,

✓

SUO. 1:15-CV-40

ROGER ROCHELLE, et al.,
Defendants.

MEMORANDUM OF LAW IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

A. Statement of the Case

This is a civil rights action brought under 42 U.S.C. § 1983 by a state prisoner seeking a declaratory judgment, injunctive relief, and damages.

B. Statement of Facts

Defendant Rochelle issued a false disciplinary report on March 30, 2015, DE 1, Appendix to Complaint, Pg. 4. Plaintiff was found guilty of these charges on April 14, 2015, DE 1, Complaint, P 83. The disciplinary board had prejudged his case, in advance of hearing any evidence. Id., P 64. Plaintiff appealed and Warden Debra Johnson reversed the board and dismissed charges on April 23, 2015, Exhibit A. TDOC Policy requires that all copies of disciplinary reports and findings (except the inmates) be destroyed upon dismissal, Policy 502.01 (VI) (M) (1) (b) (2).

upon the public interest. *McDeily v. Land*, 684 F.3d 611, 615 (6th Cir.); *Leary v. Daeschner*, 228 F.3d 729, 736 (6th Cir. 2000); *Six Clinics Holding Corp. II v. CAFCOMP Systems*, 119 F.3d 393, 401 (6th Cir. 1994); *Parker v. U.S. Dept. of Agric.*, 879 F.2d 1362, 1364 (6th Cir. 1989); *Mason Cnty. Med. Assocs. v. Knebel*, 563 F.2d 256, 261 (6th Cir. 1994). These factors "do not establish a rigid and comprehensive test for determining the appropriateness of preliminary injunctive relief," nor is any one factor controlling. *Frisch's Rest. Inc. v. Shoney's Inc.*, 459 F.2d 1261, 1263 (6th Cir. 1984); *Gonzales v. National Bd. of Med. Examiners*, 225 F.3d 620, 625 (6th Cir. 2000).

B. Probability of Success

The plaintiff has a great likelihood of success on the merits. The retaliatory acts on the part of the defendants are blatant, willful, and malicious. The complaint contains a discussion of the applicable case law regarding retaliation, and P.P. 96-105 are hereby incorporated herein by reference, DE 1.

The court can take judicial notice of Plaintiff's previous lawsuits; evidence that Plaintiff was engaged in "protected conduct." *Thaddeus-X v. Blatter*, 175 F.3d 348, 394 (6th Cir. 1999); See *Whipple v. Schofield*, U.S.D.C. (M.D. Tenn.), 1:13-cv-109; *Whipple v. Millay*, U.S.D.C. (M.D. Tenn.), 1:14-cv-114.

Defendant Rochelle issued a false disciplinary report that caused Plaintiff to lose his high-paying prison job, be transferred to another prison, and will negatively impact his chances of being paroled if this relief is not granted. Warden Johnson's decision to overturn the guilty verdict because of "lack of evidence to support conviction," supports Plaintiff's allegation the charges were bogus, Exhibit A.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
The disciplinary report itself provides the "causal connection between elements one and two" where it states Plaintiff threatened to have Defendant "adjudicated" in court. *Thaddeus-X*, 175 F.3d at 394, DE I, #23. Given that a previous commissioner, Gayle Ray, had found that "There is no intimidation when an inmate tells an employee... that he/she will be taking the matter to Federal Court," the report itself is also evidence that the charge is false. DE I, Appendix to Complaint, Pg 1.

Plaintiff has evidence of each element of a retaliation claim. Element One is established by judicial notice, two by the false disciplinary remaining in the Plaintiff's IIR and hurting his chances of parole, and three by the wording of the report. Therefore, Plaintiff has a high probability of success on the merits.

C. Irreparable Injury

If this relief is not granted, it will negatively impact parole consideration in April 2019, which is clearly an irreparable injury. Plaintiff could be forced to spend several more years incarcerated.

D. Potential Harm

In deciding whether to grant preliminary injunctions, courts ask whether the suffering of the moving party if the motion is denied will outweigh the suffering of the non-moving party if granted. See, e.g., *Mitchell*, 748 F.2d at 808.

The disciplinary report itself provides the caption
"Corruption between elements one and two," where
James Manning threatened to have Defendant Jackson
in court. Jackson X 175 F.3d at 394 (D.C. 1999).
Given that a previous Commissioner, Callahan, had
said that there is no intimidation when an inmate tells
a guard that he will be killed, the report is not
misleading. The report is not misleading. The
report is not misleading. The report is not misleading.

In the case at bar, the potential suffering of several additional years incarcerated already outweighs the "suffering" of Defendants in removing documents from Plaintiff's IIR. Further, the relief sought is nothing more than what TDOC Policy requires anyhow. TDOC Policy 502.01 (VI) (m) (1) (b) (2) and (e) (2).

In this case, the grant of relief will serve the public because it is always in the public interest for prison officials to obey the law, especially the constitution. *Llewellyn v. Oakland County Prosecutor's Office*, 402 F. Supp. 1349, 1393 (E.D. Mich. 1975) (stating "the constitution is the ultimate expression of the public interest").

Plaintiff filed an institutional grievance, which is the only administrative remedy for state prisoners. Prison officials refused to consider the grievance on the merits, ruling that disciplinary matters are inappropriate to the grievance process. DOC staff are not sufficiently intelligent to realize that the disciplinary matter was resolved previously; Plaintiff's grievance was purely



MISSISSIPPI DEPARTMENT OF CORRECTIONS
INVESTIGATIVE DIVISION

[Redacted]

a clerical matter of removing the documents from his IIR, in accordance with policy.

III. CONCLUSION

For the foregoing reasons, Plaintiff prays that this court will grant the motion in all respects, and require any and all references to Disciplinary #1148734 be removed from his IIR.

Respectfully submitted the 24th day of July, 2016

~~Robert Z Whipple, III~~
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Distribution Upon Final Resolution:

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